

Service Date: August 22, 2003

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

\*\*\*\*\*

IN THE MATTER OF An Investigation	)	
of NorthWestern Energy's Financial and	)	UTILITY DIVISION
Related Transactions with NorthWestern	)	
Corporation, its Affiliates and Creditors	)	DOCKET NO. D2003.8.109
That May Impair Its Financial Solvency	)	
and Public Utility Service Obligations	)	ORDER NO. 6505

**ORDER INITIATING INVESTIGATION**

**Background**

1. On August 13, 2003, the Montana Consumer Counsel (MCC) filed a petition requesting that the Commission initiate an investigation of NorthWestern Energy (NWE), a division of NorthWestern Corporation(NOR), a Delaware corporation authorized to transact business within Montana. MCC specifically requests that the Commission (1) investigate the finances, corporate structure, capital structure, cash management practices, and inter-affiliate and third-party financial transactions of NOR; and (2) develop and enforce appropriate regulatory controls on the foregoing (and other matters) as necessary to ensure that various inter-affiliate relationships, transfers, and transactions between NOR and the electric and natural gas utility operations lodged in its NorthWestern Energy division are not operating, and do not operate in the future, to prejudice the ability of NWE to furnish reasonably adequate service and facilities at reasonable and just charges, as required by §69-3-201, MCA.

2. MCC's petition further requests that the Commission consider the adoption of regulatory requirements, controls and measures that the MCC believes may be required to protect the public interest in reliable, safe and adequate utility service at just and reasonable rates, including:

a. the reversal of such inter-company and inter-affiliate transactions involving NWE or assets of NWE as the Commission may find to have operated, or to be operating, to the detriment of NWE's ability to provide safe, reliable and adequate utility service at just and reasonable rates;

b. the incorporation of NWE as a separate, utility-only subsidiary of NOR, in order to facilitate the Commission's oversight of NWE's operations and the prevention of future dissipation of assets dedicated to the public convenience and necessity;

c. the adoption of specific cost allocation processes, procedures and manuals for use by NWE;

d. the adoption of reporting requirements applicable to NWE's operations;

e. the adoption of principles governing current and future financing involving assets of NWE, including the following principles at a minimum:

- authorization to issue debt that is secured (i.e., backed) by utility assets must use the proceeds of the debt for utility purposes only;

- if any utility assets that are pledged or encumbered to secure debt issuances are divested or 'spun off,' the debt must 'follow' the assets and be divested or 'spun off' as well;
- if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt also must be divested or "spun off";
- If assets financed with unsecured debt are divested or "spun off," the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested or "spun off" then a proportionate share of the debt must follow the associated non-utility assets by being divested or "spun off" as well. The term "divested" in this context includes moving assets to both affiliated and non-affiliated corporations;

f. Such other and further measures as the Commission may find to be necessary, appropriate, and within its statutory authority in order to ensure the current and future provision of safe, adequate and reliable service by NWE at rates that are reasonable and just.

### DECISION

3. The Commission finds ample cause to be set forth in, and established by, MCC's Petition to initiate the requested investigation. Accordingly, the Commission directs that such investigation be opened pursuant to the authority vested in the Commission by §§69-3-102 and 106, MCA. The Commission further directs that NWE shall submit detailed reports within ten days of the service date of the Commission's order, executed under oath by the corporate officers or other executive personnel most knowledgeable, concerning each of the matters set forth in Attachment 1 to this order, and to produce those corporate officers or other executive personnel most knowledgeable

for examination by the Commission or designated Commission personnel on a schedule to be determined by the Commission.

4. NWE is also directed to respond -- separately from its response to the Commission's initial investigative requirements as set forth in paragraph 3 above and Attachment 1 to this order -- to the proposals set forth in MCC's petition, with such legal argument or evidence or both as it may deem appropriate. As part of its response, NWE is free to suggest the adoption of measures alternative or additional to those set forth in MCC's petition. NWE must demonstrate how its proposals achieve the objectives of (1) restoring NOR to financial health, (2) achieving a balanced capital structure, and (3) protecting ratepayers from the risks of non-utility investments.

#### CONCLUSION OF LAW

1. NorthWestern Energy and NorthWestern Corporation are public utilities subject to the Commission's jurisdiction. §69-3-101, MCA.

2. Public utilities must provide adequate service at just and reasonable charges. §69-3-201, MCA.

3. The Commission must ensure that public utilities are meeting their public service obligations, and in so doing has full power of supervision, regulation and control of such public utilities, and the power to do all things necessary and convenient in the exercise of these powers. §§69-1-102, 69-3-102, 103, 106, and 110, MCA.

#### ORDER

The Commission hereby opens an investigation as requested and as described above.

The Commission shall make such other and further orders during the course of this proceeding as may appear necessary, just and appropriate in the circumstances.

NWE is directed to provide the information and reports described in Paragraphs 3 and 4, above. In addition NWE is directed to respond to all discovery pursuant to the procedural schedule in this docket. NWE is directed to update its responses to discovery, to questions and requests for production at Attachment 1 to this Order, and to its responses to paragraph 4 of this Order, as necessary to ensure accuracy, and to ensure that responses are comprehensive and reflect the latest information.

The Commission directs its staff to convene a procedural conference. Pending Staff recommendations resulting from that conference, the Commission adopts the Procedural Schedule recommended by MCC and included as Attachment 2 to this Order. The Commission also directs its staff, as soon as practicable to convene a technical conference of parties for the purpose of facilitating the process and discovery of this investigation. These conferences may be held simultaneously.

Persons with proper standing who want to intervene and participate in this docket should submit a written request to intervene (original and 10 copies) to Steve Vick, Utility Division, Montana Public Service Commission, P.O. Box 202601, 1701 Prospect Avenue, Helena, Montana 59620-2601. **REQUESTS TO INTERVENE MUST BE RECEIVED BY SEPTEMBER 4, 2003.**

DONE IN OPEN SESSION at Helena, Montana, this 21<sup>st</sup> day of August, 2003, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

BOB ROWE, Chairman

---

TOM SCHNEIDER, Vice Chairman

---

GREG JERGESON, Commissioner

---

MATT BRAINARD, Commissioner

---

JAY STOVALL, Commissioner

ATTEST:

Commission Secretary  
(SEAL)

**ATTACHMENT 1****INVESTIGATION OF NWE FINANCIAL MATTERS  
NWE REPORTING REQUIREMENTS**

1. According to its current proxy statement, NOR announced a “turnaround plan” on February 19, 2003, the key elements of which are to: (i) focus on the Company’s core electric and natural gas utility businesses; (ii) substantially reduce debt by applying net proceeds from the sale of noncore assets or new securities, exchanging new securities for existing securities and other means; (iii) reduce operating costs; and (iv) improve internal financial controls and procedures. Provide all documents that embody, and all documents that relate to, the “turnaround plan” and each of its “key elements.” Provide NOR’s timeline for implementation of the “turnaround plan”; identify the personnel responsible for its implementation; report on the current status of implementation of the “turnaround plan,” the criteria used by the Company to evaluate its success or failure, and the contingency plans in place or under evaluation in the event that the “turnaround plan” is unsuccessful.

2. According to NOR’s current proxy statement, “commencing in 2005, the Company faces substantial debt reduction payments.” State, by year and due date, the levels of these debt reduction payments and identify specifically the application of the proceeds of each debt to which these payments are directed.

3. According to NOR’s current proxy statement, “Absent the receipt of significant proceeds from the sale of noncore assets, the raising of additional capital or a restructuring of debt, the Company will not have the ability to reduce its debt or meet its maturing debt obligations.”

- a. Provide a detailed explanation, with reference to specific financial obligations of NOR (and provide copies of the documents embodying such obligations, cross-referenced to the explanation), of the amounts required to enable the Company to reduce its debt and meet its maturing debt obligations.
- b. State in detail, by month for each of the past twenty four months and currently, the level of revenues generated by the Utility and how those revenues have been directed in the corporation.

4. Explain in detail the structure and operation of the five wholly owned special-purpose business trusts of NOR, including the purpose for which each was formed, the date and capitalization of its formation, the identities of the settlor(s) and trustee(s), and the funding and cash flows to each from the Utility’s operations for each of the past twenty four months and currently: NWPS Capital Financing I (NYSE:NOR PrA); NorthWestern Capital Financing I (NYSE:NOR PrB); NorthWestern Capital Financing II

(NYSE:NOR PrC); NorthWestern Capital Financing III (NYSE:NOR PrD); and Montana Power Capital I (NYSE:MTP PrA).

5. Provide a detailed explanation of NOR's compliance to date with Commission Order 6474a, in Docket No. D2002.12.159, as to the following matters:

- a. Order 6474a requires: "When a sale in whole or in part of any non-utility entities is completed the proceeds shall be as expeditiously as possible applied to debt reduction."
  - i. Identify each asset of any of the non-utility entities that has been sold or encumbered since January 27, 2003.
  - ii. Provide, for each such asset that has been sold, the sale price and terms of sale; for each such asset that has been encumbered, the method of encumbrance, the creditor in whose favor the encumbrance was granted, the proceeds of the financing involved, and the application of the proceeds of such financing.
- b. Order 6474a states: "The Commission does not favor additional financing of the subsidiaries since further investments in the subsidiaries may not be in the best interests of utility customers."
  - i. Identify each drawing of funds by NOR's non-utility subsidiaries since January 27, 2003;
  - ii. For each such drawing, explain in detail the amount(s), source(s), and application of the funds involved.
- c. Order 6474a states that "Approval of this application requires an ongoing commitment to fully fund comprehensive operation, maintenance, repair and replacement of its public utility infrastructure in Montana" and further requires that "NorthWestern must file a maintenance plan and budget within 45 days of the issuance of this Order."
  - i. Provide the maintenance plan and budget;
  - ii. Provide each change to the maintenance plan and budget;
  - iii. Assess the current status of the Company's implementation of the maintenance plan and budget;
  - iv. What service quality metrics does the Company presently use to assess the adequacy of its service, and provide all records relating to such metrics for the past 15 months;



- v. Provide copies of the Company's current manuals, policies and procedures for facilities maintenance and replacement.
  - vi. Itemize by account number from the Uniform System of Accounts (18 C.F.R. Part 101): (a) the amounts expended by the Company on operation, maintenance, repair and replacement activities since January 27, 2003; (b) the amounts scheduled to be expended by the Company on those activities between August 1, 2003 and December 31, 2003; (c) the amounts required to be expended to bring the Company into compliance with the objectives and targets set forth in its maintenance plan and budget; (d) the amounts estimated by the Company to be required to bring the Company's transmission and distribution systems into a state of compliance with each applicable safety and reliability code and criterion (NERC or NAERO, WECC, National Electrical Code, National Electrical Safety Code, etc.).
- d. Order 6474a states that: "The Commission expects the board of directors and management, to fully examine all options, including but not limited to:"

- i. "dividend policy and payouts;"

Provide a copy of the Company's current dividend policy, and state the amount and date of the Company's two most recent dividend payouts.

- ii. "board of directors and senior management compensation levels and concessions;"

(a) Provide a complete schedule of all compensation and benefits (including retention and incentive bonuses, options, contingent compensation (e.g., "golden parachutes" and performance incentives), and the cost to the Company on an annual basis of all non-monetary compensation, benefits or other consideration provided (including automobile, rail and airplane travel allowances), for each member of the Board of NOR and each management position at the level of Vice President or above.

(b) Identify and explain in detail (with copies of all pertinent documents) each change in compensation and benefits for each member of the Board of NOR and each management position at the level of Vice President or above since January 1, 2001.

(c) Identify and explain in detail (with copies of all pertinent documents) each proposed and/or contemplated change in compensation and benefits for each member of the Board of NOR and each management

position at the level of Vice President or above which has not yet been implemented.

iii. “disposition of non-utility assets/operations;”

Provide a detailed report on the Company’s efforts, since January 27, 2003, to sell or otherwise dispose of any of its non-utility assets or operations, including all documents proposing, analyzing, accepting or rejecting any such sale or other disposition, and an accounting of the costs of such efforts.

iv. “sale of the Montana First Megawatts project, or a portion thereof.”

Provide a detailed report on the Company’s efforts, since January 27, 2003, to sell or otherwise dispose of any of its utility assets or operations, including all documents proposing, analyzing, accepting or rejecting any such sale or other disposition.

- e. Order 6474a requires that “NorthWestern must report all advances to non-utility companies within 5 business days of the advances to this Commission.”
  - i. Itemize in detail each advance made to any affiliated non-utility company by NOR since January 27, 2003;
  - ii. For each such advance, state the date on which NOR reported the advance to the Commission.
- 6. Provide monthly reports for the most recent 12 months, as well as for future months, detailing the following:
  - a. Affiliate transactions to NWE;
  - b. Affiliate transactions to NWE’s Montana utilities;
  - c. Affiliate transactions by NWE;
  - d. Affiliate transactions by NWE’s Montana utilities;
  - e. To the extent not reported in a-d, provide details of transactions between NOR and NWE.
- 7. Provide monthly reports using the uniform system of accounts [income statements, balance sheets, and statements of cash flows] which reflect the results of operations for the most recent 12 month period for:

- a. NWE's Montana electric and gas utilities:
    - i. Regulated;
    - ii Non-regulated;
  - b. NWE (the utility division of NOR):
    - i Regulated;
    - ii Non-regulated;
  - c. NOR.
8. Provide a detailed description of the corporate structure of NOR, its affiliates and divisions.
9. Provide the status of and schedule for payments of Montana property taxes.
10. Provide a list and detailed description and status of all current lawsuits or litigation in which NOR or any of its affiliates are involved, and expenses incurred to date for shareholder lawsuits.
11. Provide a detailed schedule of all NOR long term debt, including the current portion thereof, showing the outstanding principal balance, interest rate, accrued interest, and payment schedule. For each item of indebtedness indicate whether it is allocated to the utility business or other business, and if to the utility business, whether it is related to the Montana, Nebraska, or South Dakota utility business.
12. Explain whether an Event of Default, as defined in the Credit Agreement among NOR, the several lenders, and Credit Suisse First Boston, dated December 17, 2002, has occurred; and provide a schedule showing the interest rates for all interest paid or accrued for amounts loaned to NOR pursuant to the Credit Agreement subsequent to February 10, 2003.
13. Provide a copy of that appraisal covering the assets of NOR subject to the lien of the Montana First Mortgage Indenture referred to in Paragraph 4.3 (d) of the Credit Agreement, referred to at #12, above.

**ATTACHMENT 2**  
**PROCEDURAL SCHEDULE**

- |     |                    |                                                                                                                                                                                          |
|-----|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | August 13, 2003    | -MCC files petition                                                                                                                                                                      |
| 2.  | August 22, 2003    | -PSC issues order opening investigation of issues raised by MCC petition and providing for intervention and discovery. NWE is required to respond to discovery within 7 days of receipt. |
| 3.  | September 2, 2003  | -NWE responds to questions and production requests at Attachment 1 of order no. 6505 in this docket.                                                                                     |
| 4.  | September 4, 2003  | -Intervention Deadline                                                                                                                                                                   |
| 5.  | September 9, 2003  | -NWE submits responses to MCC proposals as directed in Order paragraph 4;<br>-Procedural conference and technical conference convened by staff by this date.                             |
| 6.  | September 16, 2003 | -Last day for discovery directed to NWE.                                                                                                                                                 |
| 7.  | September 23, 2003 | -Last day for NWE to respond to discovery requests.                                                                                                                                      |
| 8.  | October 7, 2003    | -MCC and intervenors testimony due                                                                                                                                                       |
| 9.  | _____*             | -Last day for data requests on pre-filed intervenor testimony                                                                                                                            |
| 10. | _____*             | -MCC and intervenors answer discovery requests                                                                                                                                           |
| 11. | _____*             | -NWE, MCC and Intervenors submit pre-filed answer testimony                                                                                                                              |
| 12. | _____*             | -Last day for data requests on answer testimony                                                                                                                                          |
| 13. | _____*             | -Last day for responses to data requests on answer testimony                                                                                                                             |
| 14. | _____*             | -Hearing; live rebuttal permitted                                                                                                                                                        |

\*These dates to be determined at the Procedural Conference.